

REMARKS

As an initial matter, Examiner Isabella is thanked for the courtesies extended to the undersigned during a personal interview conducted on April 25, 2007. During that interview, the following remarks were discussed in substance, and Examiner Isabella indicated that his consideration and response would be forthcoming. No specific agreement was reached with respect to any of the claims.

Claims 1-12 and 14-21 are pending in this application.

In an election of species requirement dated November 29, 2006, the Examiner required Applicant to elect a single disclosed species for prosecution under 35 U.S.C.

§ 121. The Examiner alleged the following species to be distinct:

Species I: FIG. 1;
Species II: FIG. 4A;
Species III: FIG. 4B;
Species IV: FIG. 4C;
Species V: FIGs. 5A-5B;
Species VI: FIGs. 6A-6B;
Species VII: FIGs. 10A-10B;
Species VIII: FIGs. 13, 18A-18B;
Species IX: FIGs. 19A-19B; and
Species X: FIG. 21.

The Examiner identified claim 21 as being generic. It is respectfully submitted that claims 18, 19, and 20 are also generic, and do not pertain to any particular species identified by the Examiner.

With traverse, Applicant provisionally elects to prosecute the subject matter of Species I. Applicant submits that claims 1-4, 7 and 17-21 are readable thereon.

Traversal of Requirement for Election of Species

Applicant traverses the Examiner's requirement for election of species for the following reasons.

According to MPEP § 808.01(a), election of species may be required prior to a search on the merits ... in applications containing both species claims and generic or Markush claims. Applicants respectfully submit that a search of the subject matter of all alleged species would not impose an additional burden on the Examiner. Indeed, the subject matter has already been searched, and Official Actions on the merits were previously mailed on the claims on August 29, 2003, June 3, 2004, August 24, 2005, and March 6, 2006. It is not clear how, after four substantive actions, the claims now present an undue burden on the Examiner.

Consistent with the above, 37 CFR § 1.146 (copy attached) only permits a requirement for election to occur in the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby.

A requirement for the election of species is permissible if there is a patentable difference between the species as claimed and there would be a serious burden on the

examiner if restriction is not required. See MPEP § 803 and § 808.02. Here, it is respectfully submitted that the Examiner has not set forth proper species because there has been no articulation of any patentable distinctions between all species. In making a requirement for restriction in an application claiming plural species, the examiner should group together species considered clearly unpatentable over each other. See MPEP § 808.01(a). It is respectfully submitted that the the Examiner has failed to articulate why the species are grouped as set forth in the Office Action. The Examiner has not articulated what he deems to be the patentable distinctions between the various species. Further, it is respectfully submitted that, after four substantive actions on the merits involving the same subject matter, the Examiner cannot establish the "serious burden" required for a proper Requirement.

Accordingly, Applicant requests the Examiner to withdraw the requirement for election of species. Reconsideration of the restriction requirement is requested.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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By: 

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